

Message Text

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PAGE 01 PEKING 01440 230539Z

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E.O. 11652: GDS

TAGS: SCUL, CH

SUBJECT: CHINESE ARCHEOLOGICAL EXHIBITION, AUGUST 22 MEETING

REF: A. STATE 178033; B. STATE 178034; C. STATE 179264

1. BEGIN SUMMARY. HSIAO TEH STONEWALLED ALL U.S. PROPOSALS FOR CHANGES IN CHINESE TEXT. HE SPECIFICALLY SAID THAT FORCE MAJEUR PROVISION UN POINT 5 OF CHINESE LETTER LIMITED TO THREE CASES SPECIFIED. QUESTION OF TRANSLATION OF "ZHANPIN" WILL BE STUDIED, AND AMBIGUITY BETWEEN POINT 7 OF LETTER AND ARTICLE IX OF PROTOCOL APPARENTLY WILL POSE NO PROBLEM. END SUMMARY.

2. HOLDRIDGE AND ANDERSON MET WITH MFA INFORMATION DEPARTMENT DEPUTY DIRECTOR HSIAO TEH ON AUGUST 22 TO PRESENT DEPARTMENT'S RESPONSE TO PROPOSED CHINESE TEXTS OF LETTER AND PROTOCOL PASSED TO US JULY 6 (REF A). HSIAO EXPRESSED APPRECIATION FOR U.S. SUGGESTIONS, INDICATED SOME WOULD REQUIRE FURTHER STUDY, BUT SAID HE WOULD OFFER SOME INITIAL REACTIONS.

3. ON QUESTION OF VARYING INTERPRETATIONS OF WORD "ZHANPIN" AND OUR REQUEST THAT ENGLISH VERSION CONSISTENTLY USE WORD "EXHIBITS" TO INCLUDE BOTH EXHIBITS AND AUXILIARY EXHIBITS, HSIAO AGREED THAT IT WAS DESIRABLE TO HAVE A CONSISTENT TRANSLATION. HE SAID HE WOULD HAVE HIS TRANSLATORS EXAMINE THE PROBLEM VERY CAREFULLY AND COME UP WITH THE MOST ACCURATE TRANSLATION POSSIBLE. COMMENT: WE TOOK HSIAO'S REPLY TO MEAN THAT HE AGREES IN PRINCIPLE

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 PEKING 01440 230539Z

TO NEED FOR CONSISTENCY BUT NOT NECESSARILY TO THE USE OF "EXHIBIT".

4. REGARDING POINT 4 AND QUESTION OF TIMING OF HANDOVER OF EXHIBITION, HSIAO TOOK VERY RELAXED ATTITUDE BUT INDICATED HE THOUGHT AN ORAL AGREEMENT WAS ALL THAT WAS NECESSARY. HE SAID CHINESE HAVE ALREADY AGREED WITH CANADIANS THAT AIRCRAFT WOULD LEAVE FOR U.S. ON NINTH DAY AFTER CLOSE OF EXHIBIT. HSIAO NOTED THAT CHINESE SIDE HAD NEVER SPECIFIED DEFINITE PERIOD FOR RETURN FROM KANSAS CITY TO PEKING AND OPINED THAT WE MIGHT BE ABLE TO DO IT IN LESS THAN THIRTEEN DAYS. THIS, HE SAID, WOULD BE IN THE INTEREST OF BOTH SIDES. HE AGAIN SUGGESTED THAT ONLY AN ORAL AGREEMENT WAS NEEDED AND POINTED OUT THAT THERE HAD NEVER BEEN ANY DIFFICULTY WITH OTHER COUNTRIES ON THIS QUESTION. HOLDRIDGE AGREED THAT WE MIGHT BE ABLE TO RETURN EXHIBIT IN LESS THAN THIRTEEN DAYS, BUT NOTED THAT, GIVEN DISTANCES INVOLVED, FLYING CONDITIONS OR OTHER FACTORS COULD CAUSE DELAY. HSIAO SAID CHINESE WOULD, OF COURSE, UNDERSTAND IF UNAVOIDABLE DELAY OCCURRED AND MATTER COULD BE SETTLED AT THE TIME.

5. HSIAO NEXT TURNED TO LIABILITY PROVISIONS IN POINT 5 OF LETTER. HE NOTED OUR DESIRE THAT THE ENGLISH TEXT CONCERNING FORCE MAJEURE PROVISIONS SHOULD BE THE SAME AS IN THE BRITISH AND CANADIAN AGREEMENTS AND SAID THAT IN PRINCIPLE THIS WOULD BE THE CASE. HE SAID RATHER LAMELY THAT CHINESE SIDE OCCASIONALLY HAD TRANSLATION PROBLEMS WITH ONE TRANSLATOR USING ONE FORMULATION AND ANOTHER SOMETHING DIFFERENT, SO HE COULD NOT GUARANTEE THAT THE TRANSLATION WOULD BE IDENTICAL. IN ANY CASE, HE SAID, THE CHINESE WAS CLEAR THAT FORCE MAJEURE REFERRED ONLY TO THOSE THREE CASES CITED, I.E. CRASH OF AIRCRAFT, WAR OR WARLIKE OPERATIONS OR STRONG EARTHQUAKE. WHEN HOLDRIDGE REPEATED EXAMPLE OF BOLT OF LIGHTNING AND ADDED POSSIBLE TORNADO AS ILLUSTRATION, HSIAO BLANDLY COMMENTED THAT HE THOUGHT WE COULD CONTROL SUCH PROBLEMS BY SIMPLY NOT MOVING EXHIBIT UNDER SUCH CIRCUMSTANCES.

6. HSIAO NOTED THAT NEGOTIATIONS WITH BRITISH ON THIS POINT HAD BEEN DIFFICULT BECAUSE THEY HAD CHOSE TO TRANSPORT EXHIBITION FROM PARIS TO LONDON VIA TRUCK USING CROSS CHANNEL FERRY. BRITISH ASKED THAT REFERENCE TO CRASH OF AIRCRAFT BE MODIFIED ACCORDINGLY, BUT CHINESE HAD REFUSED. WHEN WE

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 PEKING 01440 230539Z

POINTED OUT THAT EVEN CHINESE TEXT CONTAINS CHARACTER (TENG) INDICATING OTHER NATURAL DISASTERS CONTEMPLATED, HSIAO SIMPLY INSISTED THAT IT WAS CHINESE INTENT THAT FORCE MAJEURE BE LIMITED TO THREE CASES SPECIFIED. HOLDRIDGE EMPHASIZED DIFFICULTY THIS WOULD CAUSE US AND ASKED THAT CHINESE SIDE STUDY MATTER FURTHER.

7. ON QUESTION OF OUR CONCERN THAT POINT 5 CONTINUES TO APPEAR

TO REQUIRE FULL COMPENSATION FOR PARTIAL DAMAGE, HSIAO SAID IT WOULD BE DIFFICULT TO SET SPECIFIC PERCENTAGE REQUIREMENTS FOR PARTIAL DAMAGE. HE GAVE AN EXAMPLE POSSIBLE DAMAGE TO SEVERAL PIECES OF THE JADE BODY SUIT WHICH HE SAID COULD BE REPAIRED RELATIVELY EASILY. ON THE OTHER HAND, DAMAGE TO FLYING HORSE SUCH AS BREAKING OFF OF LEG WOULD BE ALMOST IRREPERABLE. HSIAO SAID HE UNDERSTOOD OUR CONCERN FOR CLARITY BUT ASSURED US THAT AGREEMENT ON COMPENSATION COULD BE WORKED OUT THROUGH "FRIENDLY CONSULTATIONS." THE PROBLEM HAS NEVER ARISEN THUS FAR, HE CONCLUDED, AND COOPERATION OF HOST COUNTRIES HAS BEEN EXCELLENT.

8. WITH RESPECT TO DURATION OF RESPONSIBILITY FOR DAMAGES, HSIAO THOUGHT THIS WAS SELF EVIDENT. HE POINTED OUT THAT RESPONSIBILITY WOULD REMAIN WITH CANADIANS UNTIL EXHIBITION LOADED ON PLANE SINCE IT HIGHLY UNLIKELY THAT THEY WOULD PERMIT U.S. SECURITY PERSONNEL TO TAKE CHARGE ON CANADIAN SOIL. SIMILARLY, RESPONSIBILITY RESTS WITH U.S. UNTIL EXHIBIT TURNED OVER TO CHINESE AUTHORITIES IN PEKING.

9. HSIAO NOTED OUR COMMENTS REGARDING THE APPARENT CONTRADICTION BETWEEN POINT 7 OF LETTER AND ARTICLE 9 OF PROTOCOL. HE SAID REPRESENTATIVES ACCOMPANYING EXHIBITION COULD SPEAK IN AN OFFICIAL CAPACITY FOR THE CHINESE SIDE, SO IT WAS HIS VIEW THAT ALL DISPUTES WOULD IN THE FIRST INSTANCE, BE TAKEN UP BETWEEN THEM AND THE HOST ORGANIZATION. SHOULD THOSE TWO PARTIES NOT BE ABLE TO RESOLVE THE DIFFICULTY, THE DEPARTMENT AND PRCLO COULD THEN BE BROUGHT IN.

10. HOLDRIDGE THANKED HSIAO FOR HIS PRELIMINARY COMMENTS AND SAID HE WOULD CONVEY THEM TO DEPARTMENT IMMEDIATELY. IN PARTING HOLDRIDGE SAID HE HOPED THAT WE WOULD HAVE AN ENGLISH TEXT SOON AND COULD RAPIDLY CONCLUDE OUR NEGOTIATIONS.
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 PEKING 01440 230539Z

1. IN RESPONSE TO PARA 3, REF. C., IT SEEMS CLEAR THAT CHINESE ARE EITHER UNWILLING OR UNABLE TO MAKE ANY OTHER THAN MOST MINOR CHANGES IN THEIR TEXT. IT IS OUR VIEW THAT THIS STEMS IN PART FROM TOTALLY DIFFERENT APPROACH OF CHINESE TO CONTRACTUAL RELATIONSHIP. WHEREAS WE WANT MAXIMUM CLARITY AND SPECIFICITY, CHINESE PREFER MAXIMUM FLEXIBILITY, BASING MUCH ON ORAL AGREEMENT AND "GOODWILL". CHINESE ALSO PROBABLY FEEL THAT AGREEMENT THEY HAVE PREPARED HAI WORKED WITH ALL OF THE OTHER COUNTRIES TO WHICH THE EXHIBITION HAS GONE AND ARE RELUCTANT TO CHANGE IT. APART FROM FORCE MAJEURE ELEMENT, WE SUGGEST THEREFORE THAT WE NOT ATTEMPT FURTHER CHANGES IN TEXTS OF LETTER AND PROTOCOL, BUT INCLUDE OUR UNDERSTANDINGS IN A COMPREHENSIVE DIPLOMATIC NOTE TO BE PASSED TO CHINSE. WE DO NOT THINK CHINESE WILL OBJECT STRONGLY TO THIS PROCEDURE. OBVIOUSLY,

QUESTION OF FORCE MAJEURE IS THE MAJOR PROBLEM TO BE RESOLVED. DEPARTMENT WILL HAVE TO DECIDE HOW MUCH LEEWAY WE HAVE ON THIS, BUT IN VIEW OF HSIAO TEH'S STRONG STAND TODAY IT SEEMS UNLIKELY CHINESE WILL CHANGE THEIR POSITION. WE WILL CHECK WITH OUR BRITISH, CANADIAN, AUSTRIAN, SWEDISH AND FRENCH COLLEAGUES TO DETERMINE WHAT THEIR UNDERSTANDINGS WERE WITH CHINESE ON THIS POINT.

12. NEXT STEP SHOULD BE THE RECEIPT OF ENGLISH LANGUAGE TEXTS AND ANY FURTHER COMMENTS HSIAO MAY HAVE ON OUR PSOPPOSALS. IN MEANTIME, DEPARTMENT MAY WISH TO BEGIN PREPARATION OF DIPLOMATIC NOTE BASED ON TODAY'S MEETING. WE THINK CHINESE ARE AS ANXIOUS AS WE ARE TO CONCLUDE NEGOTIATIONS, BUT FIRST WEEK IN SEPTEMBER PROBABLY TOO EARLY TO EXPECT EXCHANGE OF DOCUMENTS EVEN IF WAY IS FOUND TO RESOLVE FORCE MAJEURE PROBLEM. BRUCE

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